

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
Oxford Division

JOHN RASH,

Plaintiff,

v.

LAFAYETTE COUNTY, MISSISSIPPI,

Defendant.

Civil No. 3:20-cv-00224-NBB-RP

PLAINTIFF JOHN RASH'S RESPONSE TO DEFENDANT'S MOTION TO STRIKE

Plaintiff John Rash respectfully submits this Response to Defendant's Motion to Strike Plaintiff's Exhibits 45 through 48 from Plaintiff's Response to Defendant's Motion for Summary Judgment (ECF No. 86).

1. Defendant's motion seeks to strike from Plaintiff's opposition to Defendant's Motion for Summary Judgment four articles published in the local and national press, on the basis that Plaintiff did not produce copies of those materials to Defendant in discovery. The exhibits at issue are publicly-available articles that corroborate that the Lafayette County Courthouse grounds have historically been a gathering space for the local community.

2. Defendant's motion to strike these materials should be denied because courts properly consider publicly-available materials and secondary sources when conducting First Amendment forum analysis, regardless of whether such materials are part of the discovery record.

3. Defendant's motion should also be denied because Defendant did not suffer any prejudice from any allegedly late or deficient disclosure of the four news articles at issue, and indeed Defendant makes no argument that it was prejudiced. Therefore, even if there was a failure

to disclose or late disclosure of these exhibits, it was harmless under Fed. R. Civ. P. 37(c)(1).

4. Plaintiff submits the accompanying Memorandum of Law in support of this Response.

5. For the foregoing reasons, Defendant's Motion to Strike Plaintiff's Exhibits 45 through 48 from Plaintiff's Response to Defendant's Motion for Summary Judgment should be denied.

Respectfully submitted,

Dated: March 19, 2021

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CERTIFICATE OF SERVICE

I, Joshua Tom, hereby certify that on March 19, 2021, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all parties on file with the Court.

/s/ Joshua Tom
Joshua Tom